
Appeal Decision

Site visit made on 4 October 2022

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

Appeal Ref: APP/D0840/W/22/3298828

Storage Facility, Truthwall, St. Just TR19 7QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by KTMP Developments Ltd. against the decision of Cornwall Council.
 - The application Ref PA21/06739, dated 22 June 2021, was refused by notice dated 16 November 2021.
 - The development proposed is the demolition of commercial buildings and construction of five dwellings with associated amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of commercial buildings and construction of five dwellings with associated amenity space at the Storage Facility, Truthwall, St. Just TR19 7QN, in accordance with the terms of the application Ref PA21/06739, dated 22 June 2021, subject to the conditions below.

Application for costs

2. The appellant has made an application for an award of costs against Cornwall Council, which is the subject of a separate decision.

Preliminary matter

3. Emerging at the time of the Council's decision, the St. Just-in-Penwith Parish Neighbourhood Development Plan 2021-2030 was made on 9 February 2022 and is therefore part of the statutory development plan ('NDP').

Main issues

4. The main issues are the effect of the proposal on local character, and whether the appeal site is an acceptable location for the development proposed.

Reasons

Local character

5. The site is an irregular parcel of land of about 0.29 hectares to the south of Truthwall. Truthwall is a small settlement straddling the B3306. Its built form blurs into Botallack northwards. Truthwall has a compact, intimate form. It is arranged around an historic nucleus at the junction of the B3306 and Truthwall Lane. There is a wide site access directly off the B3306 puncturing the hedge or hedgebank that otherwise flanks the road southwards. There are therefore relatively open views of the site and its buildings, in conjunction with nearby

properties, from that perspective. There is a substantial boundary wall along the northern perimeter, and also a line of trees by the south-westerly edge of the site (both of which serve to limit wider visibility).

6. Some of the site is laid to grass, much being hardstanding. There are references to occasional structures being present since around 1870, and also to historic mine workings in the appellant's Phase 1 Preliminary Risk Assessment ('PAR').¹ However present buildings appear principally of mid-twentieth century blockwork construction. Some have corrugated asbestos roofs. Buildings may have been created and modified at different times. All are, however, of simple, utilitarian or functional appearance. There is nothing to suggest that the present nature of the site is anything other than authorised.
7. Judging by their current state, the site has been largely left to its own devices for some time. Various buildings show structural failings. My observations of the site are consistent with what I am told of its history. I understand that the site was formerly owned by Warrens Bakery. However, the appellants explain that it was, in recent years, used as 'little more than a dumping ground for machinery and fixtures that were no longer required in their factories and shops'. I am told that the site has been more or less used in that manner for a decade, which tallies also with a number of pre-application enquires over that time.
8. As is the case of many rural historic rural settlements, Truthwall has evolved incrementally over time. Grade II listed Truthwall Farmhouse is close by to the north-east, also referred to in the information before me as the Manor House.² The list entry aptly describes the Farmhouse as a plain, austere building tracing its origins back to the seventeenth or eighteenth century. It is of coursed local rubblestone with a slate roof. The adjoining house to the north of it, and the property immediately opposite across the B3306 are similarly listed. They are of similar materials and construction, appearing broadly contemporaneous in origin. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the '1990 Act') places a duty on me to have special regard to the desirability of preserving listed buildings and their settings.
9. Many buildings at Truthwall are of a comparable vernacular, albeit individually designed and constructed (and therefore with some variance in height, scale and appearance). There have also been some latter additions. Properties tend to be simple and robust in design and relatively modest in scale. They honestly reflect the practicalities of building with local materials and represent a functional design to withstand the elements. The north-eastern boundary of the site demarcates the limits of the Truthwall Conservation Area ('TCA'), which heads away towards Botallack. Section 72(1) of the 1990 Act requires me to pay special attention to the desirability of preserving or enhancing the character and appearance of that area. Paragraph 200 of the National Planning Policy Framework ('NPPF') sets out that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting,³ should require clear and convincing justification.

¹ Wheal Jane Consultancy, 4 January 2021.

² List entry No. 1143263.

³ Defined in the NPPF as the surroundings in which a heritage asset is experienced.

10. Buildings here are intertwined with landscape history. Truthwall falls within the Cornwall and West Devon Mining Landscape World Heritage Site ('WHS').⁴ The surrounding landscape is dotted with visible remnants of that legacy. Historic properties in the settlement evidently grew up in connection with what could be wrought from the land by manpower, both via mining and agriculture. The site also falls within the Cornwall Area of Outstanding Natural Beauty ('AONB'),⁵ and the Penwith Heritage Coast.⁶ Section 85 of the Countryside and Rights of Way Act 2000 as amended places a duty upon me to have regard to the purposes of conserving and enhancing the natural beauty of the AONB (accorded the highest status of protection in terms of landscape character as set out in NPPF paragraph 176). The landscape here is characterised both by intimacy, in changing levels and a beguiling overlay of land organisation and reorganisation etched in stone, and openness in expansive vistas of a windswept coastal plateau.⁷
11. Insofar as this appeal is concerned, local character therefore derives from not only from the physical form and materials of buildings, but their relationship to a complex overlay of landscape history. Combined, those facets honestly reflect the past in the present. Therein lies significance.
12. Inherent in my reasoning above is that the site detracts from significance. I acknowledge that historic integrity may be reflected in the evolution of an area over time. However in this instance the nature of the site and design of buildings is clearly incongruous. The site is effectively a discordant and relatively modern addition. Buildings on site, whilst squat, are nevertheless substantial in scale. They are also of modern materials, standardised design, and utilitarian appearance (contrasting with the prevailing characteristics of the built environment). Whilst the site is somewhat enclosed, its present openness from certain vantage points, and the extent of hardstanding, are at odds with landscape character. There is no indication that the site has a particular associative resonance with heritage assets, the landscape, or heritage more broadly. If that was the case at some point in time, it has essentially now been overwritten.
13. Put briefly, the proposal is to demolish existing structures and to construct five detached dwellings. They would be arranged loosely along a sinuous spur off the B3306.⁸ 'Unit 5' would fall broadly in line with Truthwall Farmhouse, reflecting the linear arrangement of dwellings beside the road here. 'Unit 4' would be drawn away from the neighbouring house to the north-east compared to the location of current buildings. Dwellings proposed would take certain design cues from a local vernacular. They would be essentially traditional in proportions and arrangement, and natural slate and stonework would be used. Dwellings would be interspersed with landscaping, planting and Cornish hedges.

⁴ Noting the Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2020-2025, and the Cornwall and West Devon Mining Landscape World Heritage Site Supplementary Planning Document (adopted 2017).

⁵ Noting the approach set out in the AONB Management Plan (adopted 2022)

⁶ Via saved policy CC-5 of the Penwith Local Plan (adopted 2004).

⁷ The site falling within landscape character area CA02 of the Cornwall and Isles of Scilly Landscape Character Study (published 2007).

⁸ As shown on plan 20244-PL-00-06, Rev: B.

14. I accept that the proposed dwellings would be taller than both the existing structures on site and compared to nearby dwellings, including Truthwall Farmhouse. They would also be relatively large compared to an historic vernacular and would, on occasion contain ostensibly modern domestic design features such as extensive areas of glazing. The arrangement of properties within the site is somewhat formulaic, rather than representing a livelier or more complex grain characteristic of areas with a rich history. I understand, for similar reasons, that some nearby residents dislike the aesthetic of recent dwellings by Chy an Goth towards the north of the site.
15. However the dwellings proposed would not be excessive in height or scale. In terms of the interrelationship with the Manor House, the appellant gives the difference in ridge height as some 1.9 metres.⁹ I have noted above that there is already some variance in the height and scale of properties here reflecting their individual construction over time. In that context, and given the relatively generous separation between proposed unit 5 and the Manor House, the proposal would assimilate comfortably with its surroundings in that respect. There are also examples of buildings in the surrounding area of a comparable scale and plot size, not only those near Chy an Goth, but also historic properties (particularly moving northwards through the TCA).¹⁰
16. In my view the open or comparatively low density arrangement of the site would allow for a comfortable transition to the landscape surroundings of Truthwall, more so than the consolidated form of the site at present. Whilst emulating historic forms in modern buildings is not always optimum, I have nevertheless set out above how the scheme would take some reference from the built form of its surroundings. In this instance that would better assimilate with local character than modern, standardised utilitarian forms now deteriorating. The appearance of the proposal would, moreover be softened by landscaping (which could be secured via condition were the scheme acceptable as a whole). That would result in the site having greater affinity with the enclosed character of the settlement compared to its current nature. I also note that hedges would be augmented around the site access.¹¹
17. Drawing together the foregoing reasoning, the site currently detracts from significance and local character. The proposal would, notwithstanding certain aspects of the proposed design noted in paragraph 14, integrate acceptably with its surroundings. It would preserve the significance of designated heritage assets and likewise have a neutral effect on landscape character and history, a proportionate scheme relative to the existing site. I therefore conclude that the proposal would accord with the relevant expectations of statute, the relevant provisions of policies 1, 2, 3, 12 and 23 of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016, the 'LPSP'), NDP policies AD1, AD2 and BD1, and also the approach in NPPF paragraphs 130, 174 and 176. In summary, and amongst other things, those policies seek to ensure all development integrates suitably with its surroundings. The Cornwall Design Guide 2021, notably at paragraph 3.1.2, echoes that approach.

Acceptability of use

⁹ The Council's figure is 2 metres (statement of case, paragraph 5.8).

¹⁰ Notably, it appeared, Highclere, Trevaylor and various properties at the southerly fringes of Botallack.

¹¹ Comparing plan No. 20244-PL-00-06 Rev: B and 20244-PL-00-03.

18. Following on from LPSP policy 2a 'Key Targets', policy 5 'Business and Tourism' seeks to 'ensure a continued supply of appropriate business space...'. Section 2 of that policy deals with proposals that would result in the loss of business space, albeit that there is no indication as to what effect the scheme would have in that regard at whatever scale. Nevertheless, section 2 of LPSP policy 5 sets out that such proposals must meet one of four criteria. The conjunction 'or' is used between each. Therefore, on a plain reading, and also logically given the distinct nature of each criterion, development resulting in the loss of business space may be acceptable if any one of the four criteria is met.
19. Criteria (i) and (iv) are relevant here. They are, respectively, that it must be demonstrated that 'there is no market demand through active and continued marketing for at least a period of 9 months; or... [that the business space is] ...unsuitable to continue as business use due to environmental considerations.' NDP policy CD3 'Conversion of commercial premises' sets out how 'applications to convert existing retail or commercial premises other than holiday lets to residential use will normally be resisted unless there is strong evidence that the premises are not commercially viable'.
20. 'Strong evidence' is less prescriptive than LPSP policy 5, section 2, criterion (i). Any conflict between elements of a development plan must be resolved in favour of the latest to be adopted.¹² Nevertheless if a proposal would comply with LPSP policy 5, that, to my mind, would logically amount to the strong evidence required via NDP policy CD3. The principal objective of policy CD3 is 'to ensure that the existing level and range of retail and service outlets (other than holiday lets) is retained...'. The focus of policy CD3 is on services/ outlets, which the site has never been. Nonetheless NDP policy CD3 applies to commercial premises, founded on evidence of local support for business development. I cannot discern a policy or logical distinction between 'business' or 'commercial' premises insofar as this appeal is concerned, though one may exist in other contexts.
21. The appellant contends that NDP policy CD3, by virtue of the use of the word 'conversion' would not apply to the proposal for 'demolition of the existing buildings and their replacement with new dwellings.' That is a strained interpretation. Such logic could be applied to many, if not most, schemes reducing commercial space (fundamentally undermining what the policy seeks to achieve). There is no express reference within the policy to applying only to existing buildings. Conversion, although I appreciate it has certain connotations in different contexts,¹³ accorded its ordinary meaning is to 'change in form, character or function'. The function of the site would be changed setting aside built development. Similarly accorded its ordinary meaning, 'premises' refers to the 'building and land occupied by a business'. Premises would remain without buildings. Even if my reasoning in that respect is incorrect, LPSP policy 5 applies to similar effect.
22. I note that NDP policy CD3 sets three further criteria as to where such development may be acceptable. As the site falls within the Truthwall settlement boundary and given its nature and relationship with the settlement on the ground, criterion 3 is met (and there is similarly no conflict with the

¹² Section 38(5) of the Planning and Compulsory Purchase Act 2004 as amended.

¹³ Notably permitted development rights for the conversion of existing buildings.

scheme in terms of LPSP policy 3a). I have addressed character and appearance above, to which criterion 1 relates. I will turn subsequently to criterion 2 subsequently, which relates to living conditions. The development plan must, moreover, be read as a whole (as must the NPPF). No one element automatically takes precedence over any other. Therefore the principle of redeveloping a business or commercial site is somewhat distinct from an assessment of what is proposed in its place.

23. In respect of LPSP policy 5, section 2, criterion (i), I acknowledge that the site has been vacant, or intermittently used, for quite some time (during which there have been various alternative schemes mooted). I accept that there may be other sites in the surrounding area that could host business uses.¹⁴ However there is scant information before me as to the marketing that has taken place, including in respect of its duration or specifics. The appellant also notes that 'the marketing took place during the pandemic at a time when commercial space was less in demand'.¹⁵ There is furthermore no substantive information before me as to the availability of, or constraints that apply, in respect of other commercial sites (for example whether vacancy levels are part of natural turnover). I cannot therefore conclude that the specific requirements of LPSP policy 5, section 2, criterion (i) have been met. That is despite there being no indication in the evidence before me of any interest expressed in re-establishing an active business in this location.¹⁶
24. Historically many different uses grew up in close proximity to one another resulting in inter-relationships that appear sub-optimal by modern standards, but which prove unproblematic. That appears to be what has occurred here, albeit that there is limited information as to the history of the site beyond references in the PRA. Buildings on site have nevertheless been present for some considerable time. There is no indication that activities conducted on site have previously entailed complaints, albeit that might well be as the site has not recently been intensively used. I also accept that not all commercial or business uses entail unacceptable potential to adversely affect the living conditions of those nearby (for example those falling within use class E 'commercial business and service').¹⁷
25. However, in my view, there are particular 'environmental considerations' within the terms of LPSP policy 5 applicable in this instance. Truthwall is a small settlement. As set out above it has a relatively compact form around an historic nucleus. The site abuts the TCA and falls within the WHS, AONB and Heritage Coast (and also within the setting of nearby listed buildings). Truthwall Farmhouse or the Manor House is set next to the site. There is another property closer still to the north-east. The site itself marks the southernmost extent of the settlement.
26. The resumption of an active commercial or business use here would inevitably entail the potential for noise and disturbance. There is a distinction between how the site has been used, in association with a bakery, and what it may legitimately be used for. Depending on various factors manufacturing, whether

¹⁴ Noting document RM.7 contained within the appellant's statement of case.

¹⁵ Appellant statement of case, paragraph 6.1.2.

¹⁶ Noting document RM.5 contained within the appellant's statement of case.

¹⁷ Of the schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, including via the Town and Country Planning (Use Classes) (Amendment) Regulations 2020.

food or other items, may fall within use class B2 'general industrial'. Storage and distribution of products may fall within use class B8 'storage and distribution'. Although that is hypothesis, unlike use class E, such uses are typically not appropriate in residential areas (which may broadly characterise Truthwall). There is no definitive information before me as to the existing authorised use of the site. Nevertheless a resumption of use here along the lines of its erstwhile function has, in my view, the potential to entail adverse effects to closely-located neighbours. There is, moreover, nothing indicating there are constraints or conditions on the use of the site at present (such as in respect of hours of operation).

27. As set out above two properties are very close to the site, and the settlement more broadly has a relatively close-knit form. Moreover Truthwall is characterised by a clear sense of rurality and tranquillity. Thus noise and disturbance arising from a business use here is likely to be more intrusive than in other areas with a higher prevailing baseline. The site falls to the south or south-west of its neighbours and other properties, and therefore noise generated on site is likely to be carried towards them given the prevailing direction of the wind. Moreover, it would be difficult to identify many sites similarly protected on account of their historic and landscape character. As reasoned in respect of the first main issue, the existing buildings clearly detract from that context.
28. Summarising the foregoing reasoning, although compliance with LPSP policy 5, section 2, criterion (i) has not been demonstrated, the site has nevertheless been largely left to its own devices for quite some time and there is no indication of any active interest in bringing it back into use. Given the specific nature of the site and its surroundings, there are particular environmental considerations such that the scheme would accord with criterion (iv). Those are both in terms of neighbouring living conditions and in respect of local character. I therefore conclude that the location is acceptable for the development proposed in compliance with the relevant provisions of LPSP policy 5 and NDP policy CD3. There is strong evidence that the premises are unviable.

Other matters

29. I have taken careful account of all representations before me, including in respect of NDP policy AH6 as the only NDP policy which expressly relates to 'open market' housing as is proposed here. I accept that needs are predominantly for smaller dwellings than proposed, and those that are affordable (whether in planning terms or accorded its ordinary meaning). However that is not to suggest that there is no need for, or benefit associated with, 'larger' dwellings. I also note that the NDP accords support to open market housing 'suited to the specific needs identified for the Parish,' rather than identifying a specific proportionate mix of sizes, or specifically preventing dwellings of the size before me.
30. Similarly I acknowledge concerns that the dwellings proposed may be occupied as second homes or holiday lets, and appreciate the implications were that to occur in terms of the local community. Nevertheless, in this particular instance, there appears to be no policy basis to justify a restriction in that respect. In that context, although there is no alternative scheme before me, were smaller dwellings proposed they might equally be used as such in time. I note that

neither the nature of the proposed dwellings relative to local needs, nor the potential implications of any end users, formed part of the Council's case against the proposal.

31. I note concerns of neighbours in terms of privacy. However the proposed dwellings would be drawn away from boundaries and would have a comparable, if not more generous, separation from neighbouring properties than typically prevails here. Landscaping would also be provided which, when mature, would provide some natural screening. Units 4 and 5 have consciously been designed to limit views north-eastwards.¹⁸ Consequently the privacy of those nearby would not be unacceptably affected by the development proposed. No other matters therefore serve to alter my overall conclusion regarding the acceptability of the development proposed.

Conclusion

32. For the foregoing reasons, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

33. In addition to requiring commencement within the relevant statutory period, I have imposed conditions specifying compliance with the supporting plans for clarity and in order to ensure that the proposal is implemented as assessed above. To ensure that the proposal integrates sensitively with its surroundings, I have additionally imposed conditions 3, 4 and 5 (which make provision for materials, landscaping and lighting). Condition 6 is further necessary in order to ensure that each dwelling is provided with associated parking, thereby obviating adverse effects arising from parking elsewhere, or associated with vehicular movements on unmade ground (in line with LPSP policy 13 and NDP policy BD5).
34. The PRA notes the potential presence of naturally occurring radon and arsenic along with a history of made ground on site, a shaft in the north-west, and potential pathways associated with mine workings elsewhere. Albeit that those risks are limited, and in large part result from geophysical conditions as opposed to former uses or potential contaminants, as a precautionary approach it is reasonable to impose conditions 7, 8 and 9 which make arrangements for investigating and remediating any potential contamination encountered.
35. Condition 7 must necessarily apply before any development is undertaken. Any works have the potential to affect or uncover contamination. In imposing conditions I have had regard to the tests in the NPPF, the Planning Practice Guidance and relevant statute, to ensure that all are necessary, relevant to planning and to the development to be permitted, enforceable, precise and otherwise reasonable. With that in mind I have amalgamated certain conditions advanced, and amended the wording of some to ensure that they are appropriate, without altering their fundamental aims.

Tom Bristow
INSPECTOR

¹⁸ Plans No. 20244-PL-02-04, Rev: A, and 20244-PL-02-05, Rev: B.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20244-PL-00-01, 20244-PL-00-04, 20244-PL-00-05, 20244-PL-00-06, Rev: B, 20244-PL-01-01, Rev: A, 20244-PL-01-02, 20244-PL-01-03, Rev: A, 20244-PL-01-04, 20244-PL-01-05, Rev: A, 20244-PL-02-01, Rev: C, 20244-PL-02-02, Rev: A, 20244-PL-02-03, Rev: A, 20244-PL-02-04, Rev: A, and 20244-PL-02-05, Rev: B (including as regards the phasing scheme shown on plans 20244-PL-00-04 and 20244-PL-00-05).
- 3) Before their use in the development hereby permitted, details of the materials to be used in the construction of the external surfaces of the dwellings and layout of the site (including doors, windows, lintels, sills, stonework, wall and roof slates, hardsurfacing) shall have been submitted to, and agreed in writing by, the local planning authority. The development shall be carried out in accordance with the agreed details and retained as such thereafter.
- 4) All planting, seeding or turfing detailed in the approved scheme of soft landscaping, shown on approved Plan 20244-PL-00-06, Rev: B, shall be carried out in the first planting season following the first occupation of any dwelling hereby permitted, or the completion of the development, whichever is the sooner. Any trees or plants which die, are removed, or become seriously damaged or diseased within a period of five years from the carrying out of the soft landscaping scheme shall be replaced in the next planting season with others of a similar size and species as those originally planted.
- 5) No dwelling hereby permitted shall be first occupied until details of any external lighting have been submitted to, agreed in writing by the local planning authority and implemented. Once implemented the agreed external lighting shall be retained thereafter.
- 6) No dwelling hereby permitted shall be first occupied until the parking area serving that dwelling has been laid out and constructed in accordance with approved plan 20244-PL-00-06, Rev: B. Once constructed, the parking areas shall not thereafter be obstructed or used for other purposes.
- 7) No development hereby permitted shall be undertaken until an assessment of the risks posed by any contamination shall have been submitted to and agreed in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or successor documents), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include a survey of the extent, scale and nature of any contamination, and identification of any potential risks to human health, property (existing or proposed), buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems and archaeological remains.

- 8) In the eventuality that contamination is identified and assessed in line with condition 7, no development shall take place where land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and agreed in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including a verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that, upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 as amended in relation to its intended use. The agreed remediation scheme shall be carried out by a suitably qualified contaminated land practitioner. Upon completion a verification report shall be submitted to and agreed in writing by the local planning authority demonstrating the effectiveness of the remediation. No dwelling hereby permitted shall be occupied until that report is agreed.
- 9) Any contamination that is found during the course of undertaking the approved development that was not previously identified pursuant to conditions 7 and 8, shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and agreed in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to, and agreed in writing by, the local planning authority. These agreed schemes shall be carried out before the development is resumed or continued.